

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT BANKS)	
Claimant)	
VS.)	
)	
HAMM ASPHALT, INC.)	Docket No. 1,005,937
Respondent)	
AND)	
)	
AMERICAN GUARANTEE & LIABILITY)	
Insurance Carrier)	

ORDER

Claimant appealed the August 14, 2003 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

Judge Avery denied claimant's request for preliminary benefits, finding that "[n]otice was not given within 10 days" and "[j]ust cause was not provided."

Claimant alleges two accidental injuries while employed by respondent. The first accident occurred in October of 2001, when claimant rolled his employer's water truck. He reported this first accident to his supervisor. Claimant complained of bruising on his back as a result of that accident, but did not request or seek medical treatment and returned to work. The second accidental injury claimant is alleging happened during the period beginning June 1, 2002, through August 1, 2002, and is to claimant's right knee. Claimant argues that telling his supervisor on August 1, 2002, that he was hurting and could no longer do the job was notice of his second accident. Further, claimant contends just cause existed extending the notice time period to 75 days since claimant did not realize that his right knee injury was related to work.

Respondent argues that claimant failed to give proper notice regarding the occurrence of this second accident on August 1, 2002, and no explanation for his failure to report his injury to respondent was offered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record compiled to date and the parties' briefs, the Board makes the following findings of fact and conclusions of law:

On August 14, 2003, Administrative Law Judge Brad E. Avery entered an Order Denying Medical Treatment, finding that claimant had failed to give notice within 10 days and that just cause was not provided.

K.S.A. 44-520 requires that notice of an accidental injury be given to the employer within ten days of the accident. K.S.A. 44-520 goes on to state that in the event an employee fails to provide notice within ten days, the notice time can be extended to 75 days if just cause exists for the claimant's failure to provide notice within ten days.

At the August 12, 2003 preliminary hearing, claimant presented the medical records of the hospital and three physicians. During the preliminary hearing, claimant testified that he did not report his knee injury to his supervisor. When asked if claimant talked to anybody at respondent's business about his knee problem, claimant answered that he "mentioned to Travis the day I left I can't do this anymore, it hurts too much."¹ Claimant sought medical treatment for his knee on August 17, 2002, at the emergency room of St. Francis Hospital & Medical Center. Then on August 19, 2002, he went to John H. Gilbert, M.D. Medical records dated August 19, 2002, from Dr. Gilbert relate a history as told to him by claimant where he "denies a history of any specific precipitating cause, injury or activity recently" nor does he "remember any specific injury to his knee." On August 19, 2002, claimant contacted respondent's safety director and advised him of his knee problem.

The Board agrees that the record fails to prove that claimant gave proper notice or that just cause existed to extend the time for notice to 75 days from the date of the accident. Consequently, the Board must affirm the denial of claimant's request for benefits.

WHEREFORE, Administrative Law Judge Avery's preliminary hearing Order dated August 14, 2003, is affirmed.

¹ P.H. Trans. at 8-9.

IT IS SO ORDERED.

Dated this ____ day of October 2003.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Director